

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 398
97TH GENERAL ASSEMBLY

1123H.03C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 393, RSMo, by adding thereto four new sections relating to ratemaking for public utilities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 393, RSMo, is amended by adding thereto four new sections, to be
2 known as sections 393.1200, 393.1205, 393.1210, and 393.1215, to read as follows:

393.1200. As used in sections 393.1200 to 393.1215, the following terms mean:

2 **(1) "Appropriate pretax revenues", the revenues necessary to produce net operating**
3 **income equal to:**

4 **(a) The electrical corporation's weighted cost of capital multiplied by the net**
5 **original cost of eligible infrastructure system replacements and additions less associated**
6 **plant-related accumulated deferred income taxes in compliance with normalization**
7 **requirements of federal tax law;**

8 **(b) State, federal, and local income or excise taxes applicable to such income; and**

9 **(c) All other ISRS costs;**

10 **(2) "Commission", the Missouri public service commission;**

11 **(3) "Electric corporation", shall have the same meaning as in subdivision (15) of**
12 **section 386.020;**

13 **(4) "Electric utility plant projects", means:**

14 **(a) Electric plant, as defined in subdivision (14) of section 386.020, excluding newly**
15 **constructed or newly acquired electric generating plants and administrative office**
16 **buildings and their furnishings;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (b) If not being recovered in a rate schedule authorized by subsection 2 of section
18 386.266, the costs of capital projects undertaken to comply with federal, state, or local
19 environmental or safety statutes, ordinances, or regulations; and

20 (c) The costs of facilities relocations required due to construction or improvement
21 of a highway, road, street, public way, or other public work by or on behalf of the United
22 States, this state, a political subdivision of this state, or another entity having the power of
23 eminent domain provided that the costs related to such projects have not been reimbursed
24 to the electrical corporation;

25 (5) "Eligible infrastructure system replacements and additions", electric utility
26 plant projects that:

27 (a) Do not increase revenues by directly connecting the infrastructure replacement
28 or addition to new customers;

29 (b) Are in service and used and useful;

30 (c) Were not included in the electrical corporation's rate base in its most recently
31 concluded general rate case; and

32 (d) Replace or extend the useful life of existing infrastructure or are for additional
33 infrastructure;

34 (6) "ISRS", infrastructure system replacement surcharge;

35 (7) "ISRS costs", depreciation expense for all eligible infrastructure system
36 replacements and additions that are placed in service and became used and useful since the
37 date through which rate base additions were accounted for in developing the revenue
38 requirement in the electrical corporation's most recently concluded general rate case or its
39 last ISRS filing, offset by retirements and depreciation expenses accrued since the effective
40 date of rates in the electrical corporation's most recently concluded general rate proceeding
41 or its last ISRS filing on the plant included in the rate base in that general rate proceeding
42 or included in that ISRS filing, and the return on said eligible infrastructure system
43 replacements and additions at the electrical corporation's weighted cost of capital used to
44 determine the appropriate pretax revenues, with both the depreciation and return to be
45 deferred on the electrical corporation's books between the time the eligible infrastructure
46 system replacements and additions were placed in service and the effective date of an ISRS
47 rate schedule reflecting the deferred depreciation and return;

48 (8) "ISRS revenues", revenues produced through an ISRS exclusive of revenues
49 from all other rates and charges;

50 (9) "Net original cost of eligible infrastructure system replacements and additions",
51 the original cost of the eligible infrastructure replacements and additions net of
52 accumulated depreciation on the eligible infrastructure replacements and additions, offset

53 by (i) depreciation expense accrued on the plant included in the rate base in the electrical
54 corporation's most recently concluded general rate proceeding since the effective date of
55 rates developed in that proceeding, and (ii) the original cost of plant retirements and
56 accrued depreciation expenses associated with such retirements for retirements recorded
57 after the date through which the rate base additions were accounted for in developing the
58 commission-approved revenue requirement in that general rate proceeding.

393.1205. 1. Notwithstanding any provisions of chapter 386 or this chapter to the
2 contrary, beginning August 28, 2013, an electrical corporation providing electric service
3 may file a petition and proposed rate schedules with the commission to establish or change
4 ISRS rate schedules that will allow for the adjustment of the electrical corporation's rates
5 and charges to provide for the recovery of costs for eligible infrastructure system
6 replacements and additions. The commission may not approve an ISRS to the extent it
7 would produce total annualized ISRS revenues below the lesser of one million dollars or
8 one-half of one percent of the electrical corporation's base revenue level approved by the
9 commission in the electrical corporation's most recent general rate proceeding. The
10 commission may not approve an ISRS to the extent it would produce total annualized ISRS
11 revenues exceeding eight percent of the electrical corporation's base revenue level
12 approved by the commission in the electrical corporation's most recent general rate
13 proceeding. An ISRS and any future changes thereto shall be calculated and implemented
14 in accordance with the provisions of sections 393.1200 to 393.1215. ISRS revenues shall be
15 subject to a refund based upon a finding and order of the commission to the extent
16 provided in subsections 5 and 8 of section 393.1210.

17 2. The commission shall not approve an ISRS for any electrical corporation that
18 has not had a general rate proceeding decided or dismissed by issuance of a commission
19 order within the past three years, unless the electrical corporation has filed for or is the
20 subject of a new general rate proceeding.

21 3. In no event shall an electrical corporation collect an ISRS for a period exceeding
22 three years unless the electrical corporation has filed for or is the subject of a new general
23 rate proceeding; provided that the ISRS may be collected until the effective date of new
24 rate schedules established as a result of the new general rate proceeding, or until the
25 subject general rate proceeding is otherwise decided or dismissed by issuance of a
26 commission order without new rates being established. An electrical corporation shall be
27 permitted to establish or change ISRS rate schedules during the pendency of a general rate
28 proceeding so long as the establishment or change in the ISRS rate schedules takes effect
29 on or before the date through which rate base additions were accounted for in developing
30 the commission-approved revenue requirement in that general rate proceeding.

393.1210. 1. (1) No later than forty-five days prior to filing a petition with the commission to establish or change an ISRS, an electrical corporation shall submit to the commission a preliminary list of projects costing in excess of five million dollars which are to be included in the ISRS filing. The list shall include a detailed description of each such project and each such project's cost. At the time that an electrical corporation files a petition with the commission seeking to establish or change an ISRS, it shall submit proposed ISRS rate schedules and its supporting documentation regarding the calculation of the proposed ISRS with the petition, and shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules, and its supporting documentation.

(2) Upon the filing of a petition, and any associated rate schedules, seeking to establish or change an ISRS, the commission shall publish notice of the filing.

2. (1) When a petition, along with any associated proposed rate schedules, is filed pursuant to the provisions of sections 393.1200 to 393.1215, the commission shall conduct an examination of the proposed ISRS.

(2) The staff of the commission may examine information of the electrical corporation to confirm that the underlying costs are in accordance with the provisions of sections 393.1200 to 393.1215, and to confirm proper calculation of the proposed charge, and may submit a report regarding its examination to the commission not later than ninety days after the petition is filed. No other revenue requirement or ratemaking issues may be examined in consideration of the petition or associated proposed rate schedules filed pursuant to the provisions of sections 393.1200 to 393.1215.

(3) The commission may hold a hearing on the petition and any associated rate schedules and shall issue an order to become effective not later than one hundred fifty days after the petition is filed.

(4) If the commission finds that a petition complies with the requirements of sections 393.1200 to 393.1215, the commission shall enter an order authorizing the corporation to impose an ISRS that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the provisions of sections 393.1200 to 393.1215.

3. An electrical corporation may effectuate a change in its rate pursuant to the provisions of this section no more often than two times every twelve months.

4. In determining the appropriate pretax revenue, the commission shall consider only the following factors:

(1) The current state, federal, and local income tax or excise rates;

(2) The electrical corporation's actual regulatory capital structure as determined during the most recent general rate proceeding of the electrical corporation;

36 (3) The actual cost rates for the electrical corporation's debt and preferred stock as
37 determined during the most recent general rate proceeding of the electrical corporation;

38 (4) The electrical corporation's cost of common equity as determined during the
39 most recent general rate proceeding of the electrical corporation;

40 (5) The current property tax rate or rates applicable to the eligible infrastructure
41 system replacements and additions;

42 (6) The current depreciation rates applicable to the eligible infrastructure system
43 replacements and additions; and

44 (7) In the event information pursuant to subdivisions (2), (3), and (4) of this
45 subsection is unavailable and the commission is not provided with such information on an
46 agreed-upon basis, the commission shall refer to the testimony submitted during the most
47 recent general rate proceeding of the electrical corporation and use, in lieu of any such
48 unavailable information, the recommended capital structure, recommended cost rates for
49 debt and preferred stock, and recommended cost of common equity that would produce
50 the average weighted cost of capital based upon the various recommendations contained
51 in such testimony.

52 5. (1) The monthly ISRS charge may be calculated based on a reasonable estimate
53 of billing units in the period in which the charge will be in effect, which shall be
54 conclusively established by dividing the appropriate pretax revenues by the customer
55 numbers reported by the electrical corporation in the annual report it most recently filed
56 with the commission pursuant to subdivision (6) of section 393.140, and then further
57 dividing this quotient by twelve. Provided, however, that the monthly ISRS may vary
58 according to customer class and may be calculated based on customer numbers as
59 determined during the most recent general rate proceeding of the electrical corporation so
60 long as the monthly ISRS for each customer class maintains a proportional relationship
61 equivalent to the proportional relationship of the monthly customer charge for each
62 customer class. In any event, the ISRS for any customer that has a demand level that
63 exceeds four hundred megawatts shall be set using an allocation of appropriate pretax
64 revenue based on the proportional relationship of the customer charge paid by that
65 customer to the total charges paid by all customers.

66 (2) At the end of each twelve-month calendar period the ISRS is in effect, the
67 electrical corporation shall reconcile the differences between the revenues resulting from
68 an ISRS and the appropriate pretax revenues as found by the commission for that period
69 and shall submit the reconciliation and a proposed ISRS adjustment to the commission for
70 approval to recover or refund the difference, as appropriate, through adjustments of an
71 ISRS charge.

72 **6. (1) An electrical corporation that has implemented an ISRS pursuant to the**
73 **provisions of sections 393.1200 to 393.1215 shall file revised rate schedules to reset the**
74 **ISRS to zero when new base rates and charges become effective for the electrical**
75 **corporation following a commission order establishing customer rates in a general rate**
76 **proceeding that incorporates in the utility's base rates subject to subsections 8 and 9 of this**
77 **section eligible costs previously reflected in an ISRS.**

78 **(2) Upon the inclusion in an electrical corporation's base rates subject to subsections**
79 **8 and 9 of this section of eligible costs previously reflected in an ISRS, the electrical**
80 **corporation shall immediately thereafter reconcile any previously unreconciled ISRS**
81 **revenues as necessary to ensure that revenues resulting from the ISRS match as closely as**
82 **possible the appropriate pretax revenues as found by the commission for that period.**

83 **7. An electrical corporation's filing of a petition or change to an ISRS pursuant to**
84 **the provisions of sections 393.1200 to 393.1215 shall not be considered a request for a**
85 **general increase in the electrical corporation's base rates and charges.**

86 **8. Commission approval of a petition, and any associated rate schedules, to**
87 **establish or change an ISRS pursuant to the provisions of sections 393.1200 to 393.1215**
88 **shall in no way be binding upon the commission in determining the ratemaking treatment**
89 **to be applied to eligible infrastructure system replacements and additions during a**
90 **subsequent general rate proceeding when the commission may undertake to review the**
91 **prudence of such costs. In the event the commission disallows, during a subsequent general**
92 **rate proceeding, recovery of costs associated with eligible infrastructure system**
93 **replacements and additions previously included in an ISRS, the electrical corporation shall**
94 **credit the bills of its customers as of the time the credit is being given for the disallowed**
95 **amount, plus interest at the electrical corporation's weighted cost of capital from its last**
96 **general rate proceeding, over a period of no longer than six months. Credits shall be**
97 **allocated to each rate class in proportion to the ISRS charges applicable to that rate class**
98 **during the period when the over-collections occurred. Each customer in a given rate class**
99 **shall receive the same credit, and each credit shall be shown as a separate line item on**
100 **customers' bills.**

101 **9. Nothing in this section shall be construed as limiting the authority of the**
102 **commission to review and consider infrastructure system replacement and addition costs**
103 **along with other costs during any general rate proceeding of any electrical corporation.**

104 **10. Nothing contained in sections 393.1200 to 393.1215 shall be construed to impair**
105 **in any way the authority of the commission to review the reasonableness of the rates or**
106 **charges of an electrical corporation, including review of the prudence of eligible**

107 infrastructure system replacements and additions made by an electrical corporation,
108 pursuant to the provisions of section 386.390.

109 **11. The commission shall have the authority to promulgate rules for the**
110 **implementation of this section, but only to the extent such rules are consistent with, and**
111 **do not delay the implementation of, the provisions of this section. Any rule or portion of**
112 **a rule, as that term is defined in section 536.010 that is created under the authority**
113 **delegated in this section shall become effective only if it complies with and is subject to all**
114 **of the provisions of chapter 536, and, if applicable, section 536.028. This section and**
115 **chapter 536 are nonseverable and if any of the powers vested with the general assembly**
116 **pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul**
117 **a rule are subsequently held unconstitutional, then the grant of rulemaking authority and**
118 **any rule proposed or adopted after August 28, 2013, shall be invalid and void.**

393.1215. 1. Notwithstanding any provision of chapter 386 or this chapter to the
2 **contrary, any electrical corporation that has had a general rate proceeding decided or**
3 **dismissed by issuance of a commission order within the past three years shall, commencing**
4 **with the first day of the month following the month in which this section becomes effective,**
5 **implement a mechanism to track the differences between the following:**

6 **(1) The noncapitalized costs used to set the revenue requirement in that rate case**
7 **for the electrical corporation's or its affiliate's labor, training, benefits, including but not**
8 **limited to workers' compensation insurance, payroll taxes, transmission charges or**
9 **expenses, property taxes, property insurance, and for external contractors contracted by**
10 **the electrical corporation for the operation or maintenance of the electrical corporation's**
11 **transmission, distribution, or generation systems; and**

12 **(2) The sum of those costs that are actually incurred by, or allocated to, the**
13 **electrical corporation as reflected on its books and records in subsequent periods.**

14 **2. The electrical corporation shall defer any amounts tracked under subsection 1**
15 **of this section on its books and records as a regulatory asset or regulatory liability. In its**
16 **next general rate proceeding, the regulatory asset or regulatory liability will be included**
17 **in the determination of the electrical corporation's revenue requirement through an**
18 **amortization over a period of three years, without any offset, reduction, or adjustment**
19 **based upon consideration of any other factor or otherwise, except for a review of the**
20 **prudence of the costs included in any regulatory asset as part of the general rate**
21 **proceeding unless the amount of the annual amortization as of the time the amortization**
22 **is to occur exceeds two percent of the electrical corporation's base revenue level as**
23 **determined by the commission in the electrical corporation's prior general rate proceeding,**
24 **in which event the annual amortization will be reduced so that it equals the two percent**

25 **limitation. Notwithstanding the foregoing, the following costs shall not be included in the**
26 **electrical corporation's or its affiliate's labor or benefits components of the foregoing**
27 **calculation:**

28 **(1) Any costs in a separate, deferred accounting mechanism, tracker, or rate**
29 **adjustment mechanism;**

30 **(2) Labor costs for the electrical corporation's or the electrical corporation parent**
31 **company's officers;**

32 **(3) That portion of the electrical corporation's labor costs that consist of incentive**
33 **compensation that is dependent on the electrical corporation's or the electrical**
34 **corporation's parent company's earnings; and**

35 **(4) Administrative and general labor costs recorded in Account 920 of the Uniform**
36 **System of Accounts, or any successor account, applicable to electrical corporations.**

37 **3. In subsequent general rate proceedings occurring after a general rate proceeding**
38 **where an amortization through rates of a regulatory asset or regulatory liability began, any**
39 **unamortized balance shall be included in the electrical corporation's revenue requirement**
40 **through a reamortization of said balance over a period of three years, also without any**
41 **offset, reduction, or adjustment based upon consideration of any other factor or otherwise.**
42 **The sums to be reamortized under this subsection shall not count toward the two percent**
43 **limitation under subsection 2 of this section.**

44 **4. The commission shall have the authority to promulgate rules for the**
45 **implementation of this section, but only to the extent such rules are consistent with, and**
46 **do not delay the implementation of, the provisions of this section. Any rule or portion of**
47 **a rule, as that term is defined in section 536.010 that is created under the authority**
48 **delegated in this section shall become effective only if it complies with and is subject to all**
49 **of the provisions of chapter 536, and, if applicable, section 36.028. This section and**
50 **chapter 536 are nonseverable and if any of the powers vested with the general assembly**
51 **pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul**
52 **a rule are subsequently held unconstitutional, then the grant of rulemaking authority and**
53 **any rule proposed or adopted after August 28, 2013, shall be invalid and void.**

54 **5. Section 393.1215 shall terminate and be of no further force and effect after**
55 **August 27, 2025, unless that section shall be reenacted by the general assembly.**

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